1. Cellular Participation Would Not Result in Undue Market Concentration.

The Department of Justice ("DOJ") recommends a temporary limitation (to be reexamined in four years) on the acquisition of multiple PCS licenses or common ownership of PCS and cellular licenses in the same geographic area.[30] DOJ's position stems from the anticompetitive effects it foresees as potentially flowing from such intramarket acquisitions, based on the DOJ/FTC Horizontal Merger Guidelines (hereinafter "Merger Guidelines"). There are several flaws with DOJ's analysis, which are discussed in turn below.

First, as DOJ correctly notes, spectrum capacity is at best an imperfect proxy for measuring levels of market concentration.[31] In fact, Besen, et al. expect that any measure of concentration based on spectrum capacities would "understate the degree of competition in the PCS cum cellular market."[32] The Commission should consider this

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30 DOJ at 23-30.

31 DOJ at n. 27.

32 Besen, et al. at 21-22. CTIA assumes in the following analysis, for purposes of argument only, that PCS and cellular would be close substitutes. Even in these circumstances, however, considering other sources of wireless competition, such as ESMR, should attenuate DOJ's competitive concerns. Besen, et al. (at 37) explain the competitive implications of such an oversight:

> Any analysis that fails to take these alternatives into account will overstate the threat to competition posed by

(Footnote continued on page 19)

shortcoming when engaging in any such market concentration analysis.

Second, DOJ assumes the Commission will assign only three PCS licenses per market. Under this assumption, a five-firm market (3 PCS, 2 cellular) is "a highly concentrated market, in which the lowest possible HHI (assuming that all five firms have equal market shares) would be 2000."[33] However, under an equally plausible scenario in which the Commission assigns five PCS licenses per market of 20 MHz each, initial concentration in this seven-firm market is significantly reduced to an HHI of 1442, which, under the Merger Guidelines, indicates a market that is only "moderately concentrated."[34] In short, to the extent DOJ wishes to avoid a highly concentrated wireless market, the solution is not to bar cellular providers, but simply to advocate the licensing of a larger number of PCS

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32 (Footnote continued)

> permitting cellular operators to offer PCS service because it will overstate the market share held by a cellular cum PCS operator.

Of course, competitive concerns would be even smaller if, as is more likely, PCS and cellular are not close substitutes.

33 DOJ at 25 (footnote omitted).

34 Merger Guidelines at 1.51(b).

operators with a reduced amount of spectrum. As Besen et al. observe:

> [T]he argument is substantially weakened if a large amount of spectrum is assigned to PCS service and a significant number of new entrants are permitted to operate in this spectrum space along with the cellular incumbents. The exclusion of cellular incumbents cannot be justified easily if allocating additional spectrum space for the provision of PCS makes the cellular market less concentrated. It is the competitiveness of the market after, not before, the new allocation that measures market performance.[35]

Third, and most significantly, DOJ's analysis is necessarily incomplete in that it focuses solely on mergers of entire licenses and wholly ignores the possibility of "partial" acquisitions of frequency blocks. When such partial acquisitions are factored into the HHI computation, HHI levels fall squarely within the safe harbor provisions of the Merger Guidelines.

Besen, et al. provide such an analysis. Positing a "worst case" market scenario and allowing for partial acquisitions of PCS licenses, Besen, et al. describe a number of situations where acquisitions of PCS spectrum by cellular incumbents raise no anticompetitive concerns under the Merger Guidelines.[36] Moreover, they conclude:

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35 Besen, et al. at 20-21. See also OPP Cost Study at 58; Kahn Affidavit at 8-9.

36 Besen, et al. at 20-25.

> Even if one were to employ the Department of Justice horizontal merger guidelines rigidly and were to assume very conservatively that PCS is "just cellular," the case against permitting acquisitions of PCS licenses by incumbent cellular operators, either through initial assignments by the FCC or through purchases from initial licensees, is far from straightforward.... The case is further weakened, if not eliminated, if incumbents obtain only a portion of any new assignment, because that leaves another firm with the remainder.... Even if PCS is "just cellular," as it most certainly is not, and even if there are no economies of scope between cellular and PCS, a complete prohibition of cellular operators from the PCS band is not necessary to deal with the Commission's concerns about the adverse effect of market concentration.[37]

In light of the foregoing discussion, it is clear that cellular participation in PCS would not result in undue market concentration. The Commission should permit unrestricted cellular entry, because such unrestricted entry is fully consistent with the Merger Guideline's overriding policy goal "to proscribe only mergers that present a significant danger to competition," and not to "present an obstacle to most mergers," especially those which "may be reasonably necessary to achieve significant net efficiencies."[38]

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37 Id. at 24-25.

38 The Merger Guidelines permit acquisitions, notwithstanding the resulting concentration levels, if they are "reasonably necessary to achieve significant net efficiencies." Merger Guidelines at § 4. Given the integration efficiencies, i.e., scope economies, resulting from the joint provision of cellular and PCS services (discussed infra at pp. 24-25), clearly cellular

(Footnote continued on page 22)

2. The Cellular Industry is Not Suffering From Non-Competitive Performance.

A few commenters argue that the Commission must impose a restriction on the provision of PCS by cellular carriers to ensure that PCS becomes a competitive service. These commenters rely solely on the "conclusions" of a GAO study that "the existing two-carrier cellular telephone service market structure may produce only limited competition."[39] Aside from the fact that the GAO Report's claims that cellular may be insufficiently competitive are, by the Report's own admission,

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38 (Footnote continued)

acquisition of PCS spectrum is permissible under the Merger Guidelines, irrespective of concentration levels.

While DOJ anticipates this efficiency argument, it nevertheless summarily dismisses it because it feels the Commission's initial allocation will imply a judgment that additional spectrum rights beyond those granted initially are "not reasonably necessary to achieve efficiencies." DOJ at 27-28. The problem with this suggestion is twofold. First, it focuses on scale economies and completely ignores the substantial scope economies inherent in the joint provision of cellular and PCS services. Besen, et al. at 35-37. Second, it overestimates the Commission's clairvoyant capabilities. DOJ readily admits that "[t]oday's forecasts of technological development and consumer demand will almost certainly prove erroneous." DOJ at 29. It is therefore doubly curious that, despite its recognition of the vagaries that inhere in any form of PCS market prediction, DOJ nevertheless recommends the foreclosure of such integration efficiencies for (at the very least) a full four years.

39 See, e.g., MCI at 25 (citing Concerns About Competition in the Cellular Telephone Service Industry at 19) (hereinafter "GAO Report") (emphasis supplied); Teleport at 4 (same); Viacom at 18 (same).

made in the absence of any price and cost data,[40] these claims vie with the market realities that have characterized the cellular industry. To present a more accurate portrayal of the sufficiency of competition in the cellular industry, CTIA submits an additional analysis from Dr. Stanley M. Besen, Dr. Robert J. Larner, and Dr. Jane Murdoch. The authors point to the rapid increase in cellular subscribers, steady decline in cellular costs, continual expansion of cellular services, rapid pace of technological innovation and diffusion, and the heterogeneity of product offerings as the kind of evidence that "economists associate with a young industry driven by market forces and developing in a competitive context."[41] Moreover, the authors conclude that this history of competitive behavior will shape cellular carriers' future behavior, as well.[42]

Finally, Besen, et al. conclude, contrary to the inference of the GAO Report, that the performance of a market can be competitive even if its structure is not.[43] They further point out that the advent of PCS, together with the

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40 GAO Report at 41.

41 Dr. Stanley M. Besen, Dr. Robert J. Larner, and Dr. Jane Murdoch, The Cellular Service Industry: Performance and Competition, attached to these Reply Comments as Appendix (hereinafter "Besen, et al. II") at 4.

42 Id. at 8.

43 Id. at 4 and n. 9.

growth of other wireless services, such as ESMR, will subject cellular operators to additional competitive discipline.[44]

3. Joint Provisioning of Cellular and PCS Would Generate Scope Economies.

There are substantial efficiency losses at risk in eligibility restrictions, as well. The joint provisioning of cellular and PCS can generate scope economies that would redound to consumer benefit. CTIA and many other commenters identified these scope economies in their initial comments.[45] Further, several prominent economists point out that the efficiency gains achieved through the integrated provision of cellular and PCS strongly favor cellular participation in PCS.[46] For example, Dr. Alfred E. Kahn concludes:

> My strong recommendation would be that no incumbent service providers be excluded, precisely because of those economies of integration.... Moreover, since the incumbent companies are already in the business of offering communications services to subscribers, it would seem highly inefficient to deny them the opportunity to expand the range, variety and diversity of their offerings in these new ways, making fuller use of their

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44 Id. at 10. See also NERA Eligibility Study at 9-14 (concluding that cellular competition is thriving and that Commission's anticompetitive concerns regarding cellular provision of PCS are unfounded).

45 See, e.g., Bell Atlantic at 6-8; BellSouth at 39, 43-49; Cellular Communications at 8-10; CTIA at 67-69; GTE at 37; Hughes at 8; McCaw at 32; NTIA at 26; Pacific Telesis at 9; U.S. Small Business Administration at 21; USTA at 9-10; Vanguard Cellular at 17.

46 Besen, et al. at 35-37; NERA Eligibility Study at 19-20.

already considerable managerial, technical and commercial capabilities.[47]

Finally, the OPP Cost Study concludes that there are significant scope economies from the joint provisioning of cellular and PCS in the areas of operations, administration, and maintenance services; switching equipment; and handsets. In order for these economies to benefit consumers, the study recommends that cellular carriers be allowed to obtain additional 2 GHz spectrum.[48]

B. Cellular Carriers' Current 25 MHz is Inadequate to Provide Competitive PCS Services.

A few commenters suggest that cellular should be denied access to PCS spectrum because cellular carriers already possess sufficient spectrum to provide services that will compete with PCS.[49] Studies submitted by CTIA along with its comments reveal that cellular carriers will need all 25 MHz of their existing spectrum simply to meet the growing needs of both current and new users of cellular communications. In many

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47 Kahn Affidavit at 8. See generally Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Operating Companies, filed in United States v. Western Electric Co., Inc., Civ. Action No. 82-0192 (filed Feb. 2, 1987) (emphasizing efficiency losses from entry restrictions imposed by AT&T consent decree).

48 OPP Cost Study at 45,55-58.

49 See, e.g., Personal Communications Network Services of New York at 20; Rolm at 25.

major urban markets, cellular systems are operating at or near capacity with penetration rates of only 3%. This situation will be exacerbated still further as the number of cellular subscribers continues to grow from the current 10 million to the 18-20 million projected within five years. Seen in this light, to ban highly congested cellular systems from acquiring PCS spectrum will punish these systems for the very efficiencies, good service, and competitive pricing with which they are currently attracting 7,600 new customers every day.

While digital technology and higher frequency reuse techniques will alleviate the cellular congestion problem somewhat, they constitute necessarily limited solutions. Cellular carriers cannot take full advantage of higher-capacity digital technology because they must continue to support the millions of customers who own and who will continue to purchase analog phones. Even 10 years from now, CTIA estimates 15% of cellular subscribers will be analog users.[50] To avoid stranding these users and to accommodate roamer customers, the cellular industry must dedicate 10 MHz of its 25 MHz to inefficient analog technology. An additional 10 MHz will be required to service new digital subscribers, even assuming

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50 The projections of a recent EMCI study comport with CTIA estimates, predicting that by 1996 analog AMPS will account for nearly half of the world cellular installed subscriber base and worldwide AMPS sales will still hover around 7.9 million. Worldwide Cellular Markets: 1992, cited in November 1992 issue of Telocator, at 9.

digital compression will provide a 10-to-1 increase in spectral capacity over existing analog technology. Thus, even in this high capacity scenario, cellular carriers' commitments to analog and digital cellular customers will leave only 5 MHz for PCS-type services. Such limited excess spectrum will simply be inadequate to provide competitive PCS, most notably multimedia communications and similar broadband wireless services, such as video, high-speed data, and toll-quality voice. Further, under less optimistic assumptions where digital compression affords only a 5-to-1 increase in spectral capacity, all cellular carriers' existing 25 MHz will be needed to provide analog and digital cellular services, leaving no spectrum for PCS. Based on the data in Table 1, Charts B and C illustrate these two scenarios.

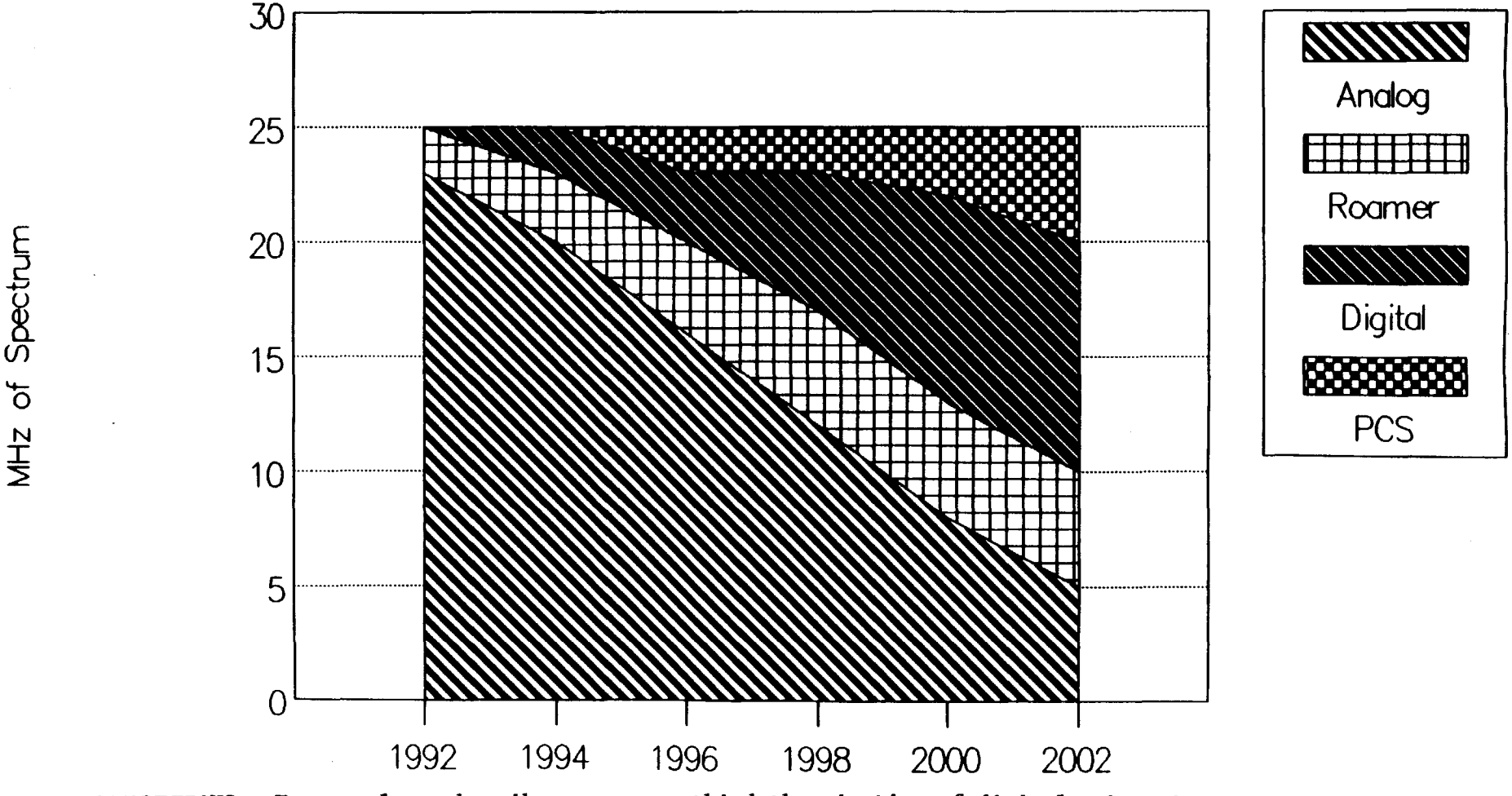
Finally, by permitting cellular carriers to access PCS spectrum, the Commission will enhance these carriers' ability to provide analog and digital, narrowband and broadband, and indoor and outdoor services, thereby affording consumers the efficiencies of scope economies and the convenience of one-stop shopping for all their wireless communications needs.

* * *

Given that any possible anticompetitive consequences of open eligibility are tenuous at best and that the efficiency gains of integrating cellular and PCS services are potentially substantial, there is no sound basis for excluding cellular suppliers from access to PCS spectrum. Indeed, to bar cellular

Spectrum Use

(High Capacity Digital)

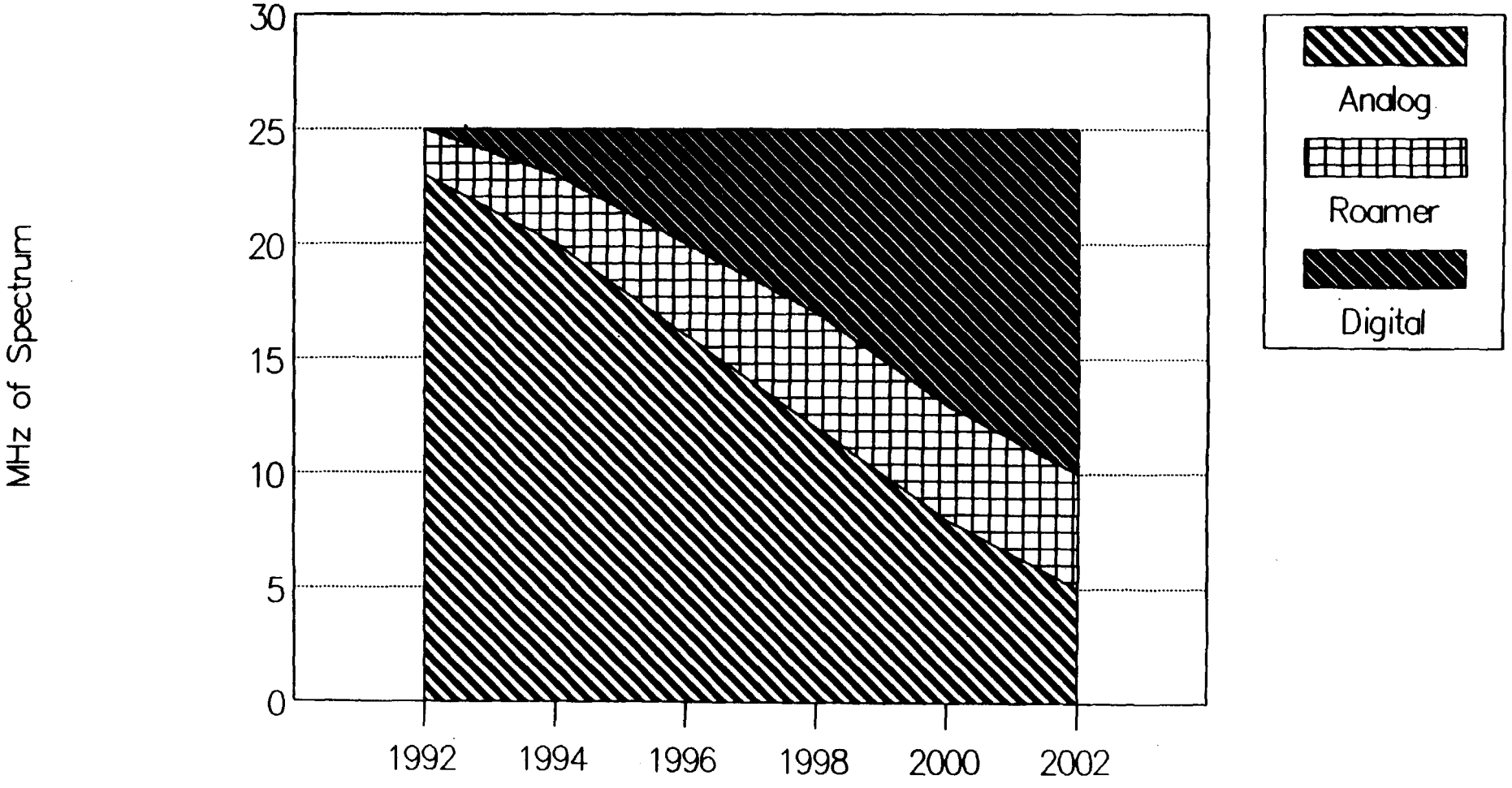


ASSUMPTIONS: Home analog subscribers use one third the air time of digital subscribers; roamer analog subscribers increases at 20% per year and roamer's air time is equivalent to digital users; digital technology increases capacity ten times over analog technology.

CHART B

Spectrum Use

(Low Capacity Digital)



ASSUMPTIONS: Home analog subscribers use one third the air time of digital subscribers; roamer analog subscribers increases at 20% per year and roamer's air time is equivalent to digital users; digital technology increases capacity five times over analog technology.

CHART C

CONTINUING NEED TO SERVE ANALOG CUSTOMERS
(Sample Markets)

YEAR	TOTAL SUBSCRIBERS	TOTAL ANALOG	TOTAL DIGITAL	% ANALOG
1992	300,000	300,000	0	100.00%
1993	360,000	324,000	36,000	90.00%
1994	432,000	348,600	83,400	80.69%
1995	518,400	371,580	146,820	71.68%
1996	622,080	390,078	232,002	62.71%
1997	746,496	400,395	346,101	53.64%
1998	895,795	397,750	498,045	44.40%
1999	1,074,954	375,975	698,979	34.98%
2000	1,289,945	327,129	962,816	25.36%
2001	1,547,935	241,020	1,306,915	15.57%
				SOURCE: CTIA

ASSUMPTIONS: City of 10 million people, with 3% cellular subscriber penetration in 1992, growing by 20% per year; 10% of all new phones sold are digital in 1993, increasing by 10% each year, until all phones sold in 2001 are digital; each year 10% of analog phones are traded in for digital.

carriers from obtaining such additional spectrum will seriously circumscribe, if not wholly preclude, their ability to provide competitive PCS offerings.

IV. PCS SERVICE AREAS

A. The Record Overwhelmingly Supports the Use of MSAs/RSAs as PCS Service Areas.

In its initial comments, CTIA strongly urged the Commission to adopt cellular MSAs/RSAs to define the geographic scope of PCS service areas.[51] The majority of commenters also overwhelmingly support the adoption of MSAs/RSAs. These commenters, ranging from PCS entrepreneurs to equipment manufacturers to government agencies to national telecommunications conglomerates, highlight the relevant characteristics of the cellular MSA/RSA scheme which recommend its application in the PCS context. Among others, the following factors strongly support the use of MSA/RSA service areas:

- MSAs/RSAs are well-defined and widely understood by industry participants, consumers, and the FCC.[52]

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51 CTIA Comments at 34-59.

52 See, e.g., BellSouth at 30-31; Centel Corporation at 3; Cincinnati Bell at 16; GTE at 35; Hughes at 6; N.Y. State Department of Public Service at 8; Ohio Linx, Inc. at 5-6; U.S. Small Business Administration at 18-19; USTA at 21; Vanguard Cellular Systems, Inc. at 17.

On several recent occasions, the Commission has

(Footnote continued on page 29)

- MSAs/RSAs will best achieve the Commission's stated goals of speed of deployment, universality, diversity of service, and competitive delivery.[53]

- Unlike all other service area options, MSAs/RSAs were initially designed and have been subsequently customized for wireless mobile services.[54]

- The MSA/RSA scheme will best accommodate initial PCS services which will most likely be localized in nature.[55]

- It is better to adopt undersized service areas and allow market forces to determine the optimal consolidation of coverage area desired by customers rather than to dictate oversized service areas in which case there is no workable mechanism to disaggregate the assigned areas.[56]

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52 (Footnote continued)

recognized the widespread acceptability and ease in licensing of MSAs/RSAs. See, e.g., Interactive Video and Data Services, 7 FCC Rcd 1630, 1638 (1992)(defining licensing areas for IVDS using MSAs/RSAs); Modification of MDS Rules, 7 FCC Rcd 3266, 3272 (1992) (proposing use of MSAs/RSAs as service areas in MDS licensing).

53 See, e.g., Cincinnati Bell at 16; Lincoln Telephone and Telegraph Company at 11; McCaw at 14-17; Palmetto Rural Telephone Cooperative, Inc. at 2-3; Sprint at 4; USTA at 19; Vanguard Cellular at 11-12.

54 See, e.g., BellSouth at 30; Vanguard Cellular Systems, Inc. at 17.

55 See, e.g., Centel Corporation at 12; GTE at 34; Home Telephone Company at 2; McCaw at 13; Small Rural Virginia Telcos at 2; Sprint at 3.

56 See, e.g., BellSouth at 34; Cellular Service, Inc. at 3-4 (noting that most PCS experimental licenses have been assigned on an MSA basis in conformance with the industry's and Commission's belief that PCS is a

(Footnote continued on page 30)

- A mismatch between cellular service areas and PCS service areas would produce unique costs which should be avoided.[57]

- MSAs/RSAs will promote broader participation by firms of all sizes in the PCS market.[58]

Thus, as the record fully demonstrates, and reasoned analysis suggests, MSAs/RSAs are indeed the most appropriate service areas for PCS.

B. The Record Amply Demonstrates that None of the Other Service Area Proposals Even Approximates MSA/RSA Suitability for PCS Licensing.

1. LATAs

Only a handful of commenters support the use of LATAs as PCS service areas.[59] While much could be drawn from the

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56 (Footnote continued)

localized service); Concord Telephone Company at 2-3; DOJ at 21; GTE at 33, n. 28; Lincoln Telephone and Telegraph Company at 10; Pennsylvania Public Utility Commission at 8; Sprint at 5-7 ("The logic of the situation is similar to adding 'salt to taste'.... Additional salt can always be added, but once food is overseasoned there is generally no remedy.").

57 See, e.g., BellSouth at 36; Cellular Communications at 19-20; DOJ at 22; NTIA at n. 45; Sprint at 8; Vanguard Cellular at 19.

In addition, several commenters correctly observe that any designation of service areas other than MSAs/RSAs would be arbitrary and capricious if accompanied by the exclusion of cellular providers from any area of PCS. See, e.g., BellSouth at 36-37; Cellular Communications, Inc. at 20. See also infra at § IV. C.

58 See, e.g., Fleet Call, Inc. at 6; Sprint at 3; Vanguard Cellular at 12.

59 See, e.g., AT&T at 12; Cable Vision at 12; Comcast at 23-24.

record and relevant precedent to point up the inadequacy of LATAs for PCS licensing, the most forceful indictment of LATA use in this context is provided by the Commission itself:

> The LATAs were not designed for cellular services. The Bell companies have been obliged to obtain numerous waivers to straddle LATA boundaries in order to enable Bell companies to meet the needs of cellular customers. The inevitable delays associated with that waiver process have produced adverse effects upon the level of competition and quality of service, in addition to administrative burdens for Bell companies, the Justice Department, and the court.... A general waiver that at least encompasses all interexchange cellular services appears to be necessary to avoid recurrent problems created by conflicts between LATA boundaries and the efficient provision of cellular services.... This waiver process may have delayed the resolution of other problems that could have produced significant benefits for the national economy.[60]

In order to avoid such inevitable delays, administrative burdens, and other adverse effects in the PCS

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60 FCC Reply to Motion of the Bell Companies for Removal of Mobile and Other Wireless Services From the Scope of Interexchange Restriction and Equal Access Requirement of Section II of the Decree, filed in U.S. v. Western Electric, Co., CA No. 82-0192 (November 3, 1992) at 3-4.

context, the Commission should clearly reject the use of LATAs.[61]

2. BTAs

Those commenters proposing the use of BTAs base their recommendations on the very same objectives which are most ably achieved by MSAs/RSAs, namely broad participation, diversity of services, and numerous entrepreneurial opportunities.[62] Perhaps in restricting their comments to the Notice's four proposed service areas[63] these commenters overlooked the fact that MSAs/RSAs will better achieve their objectives without the need to undergo an extensive customization process that would inhere in an alternate PCS service area scheme.

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61 The inappropriateness of LATA boundaries for PCS is further illuminated by the vast disparity of sizes inherent in the LATA scheme. For example, Forrest, Il., the smallest LATA, has a mere 700 subscribers -- hardly enough to sustain a vibrant PCS market. See United States v. Western Electric Co., Inc., 569 F. Supp. 990, n. 251 (D.D.C. 1983).

62 See, e.g., Ameritech at 6,17 (in favor of service areas offering the widest participation by firms with limited resources); Motorola at 12 (service areas must increase the level of entrepreneurial opportunities); Pacific Telesis Group at 21-25 (["[We] support a service area which is tied to PCS economics and promotes maximum diversity and innovation among providers.").

63 See, e.g., Pacific Telesis at 21 ("Telesis supports the greatest number of PCS service areas outlined in the Commission's options.")(emphasis supplied).

Finally, given the retail-oriented nature of the BTA scheme,[64] the costs and time delays necessary to customize these areas for PCS would be significant, while any benefits flowing from such costly tailoring would be inconsequential. Although the number of PCS licenses to be awarded would be greater under an MSA/RSA scheme than under the alternatives proposed, the process of defining a workably efficient geographic licensing area in the case of MSAs/RSAs has already been completed for an analogous wireless service. The tremendous expense and delay needed to repeat that process render any other option unacceptable. Moreover, the BTA option is particularly unacceptable, since this great expense and delay would be incurred for no apparent benefit other than avoidance of a few more lotteries.

3. MTAs

Nearly all commenters who propose the use of MTAs for PCS licensing do so not because these geographic areas are particularly well-suited for PCS,[65] but simply because these areas are bigger than MSAs/RSAs. These commenters attempt to discredit the cellular licensing scheme by focusing on delays experienced in cellular licensing and cellular's history of

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64 See CTIA at 40-44 for a full discussion of the factors on which Rand McNally Trading Areas are based.

65 Indeed, CTIA demonstrated in its initial comments that both BTAs and MTAs are especially ill-suited for PCS licensing. CTIA at 40-44, 49-50, 53-54.

consolidation. They conclude that the Commission must avoid the asserted costs of such licensing delay and consolidation in the PCS arena by assigning larger service areas at the outset.[66] These arguments are irrelevant in the PCS context.

The licensing delay experienced by cellular was caused not by the number of MSA/RSA areas but by other exogenous factors, most notably the extensive permutations and boundary adjustments these areas underwent to customize them for wireless mobile services.[67] Along these lines, the "Cellular Licensing History" graph in Chart D makes two points: first, it demonstrates that the "delays" associated with cellular licensing disproportionately accrued during the protracted rulemaking proceedings in which the MSA/RSA areas were initially defined and tailored. Indeed, 69% of the time comprising the "cellular licensing history" (i.e., 87 of 142 months) was spent conducting the MSA and RSA rulemakings rather than the actual lotteries for cellular licenses. Secondly, the graph highlights the fact that, over time, the actual lottery process itself became much more streamlined. Whereas it took

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66 See, e.g., APC at 24-29; Cable Vision at 12; Cox Enterprises at 12-13; Qualcomm at 3; U.S. West, Inc. at 13; Utilities Telecommunications Council at 31.

67 See CTIA comments at notes 34 and 35 for a full description of the extensive customization process undergone by the MSA/RSA scheme to tailor it for wireless services. See also Alltel Companies at 14 (arguing that licensing delays in cellular were caused not by the licensing areas used or the number of licenses assigned but by the unrestricted lottery process itself).

Cellular Licensing History

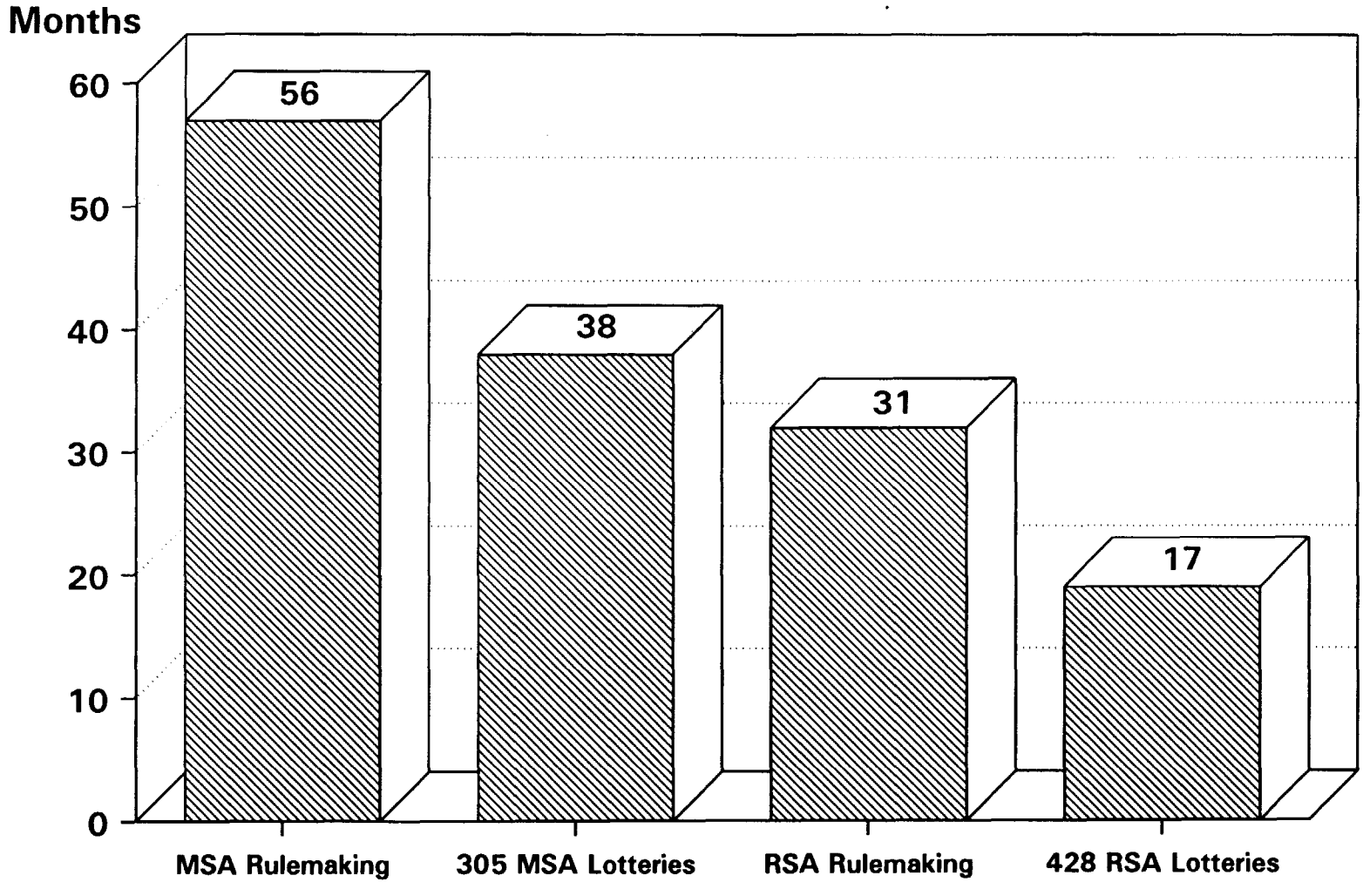

CHART D

38 months to conduct 305 MSA lotteries, it took only 17 months to conduct 428 RSA lotteries -- less than half the time to conduct nearly 40% more lotteries. Because MSAs/RSAs will be well-suited for PCS from the outset and given the Commission's extensive experience with MSAs/RSAs, such streamlined licensing would likely continue in the PCS context if MSAs/RSAs are selected for PCS licensing. Indeed, to the extent the Commission and industry participants are genuinely interested in avoiding licensing delays, they should summarily reject all service areas except MSAs/RSAs. Any other service area scheme would necessarily require the very same delay-intensive customization process for mobile wireless services that MSAs/RSAs have already completed.

The "cellular consolidation" argument is irrelevant here because PCS is more than just a cellular clone. The Commission's own definition of PCS as a "family of mobile or portable radio communications services" (emphasis supplied) discredits any attempt to depict PCS as "just cellular."[68] Indeed, if the Commission proceeds to equate PCS with cellular for purposes of defining PCS service areas (or for determining PCS eligibility), notwithstanding its articulated vision of PCS as an evolving family of wireless services, the Commission may

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68 Moreover, the Notice correctly identified the amorphous nature of PCS when it observed that "PCS is, of course, evolving and it is likely that a variety of services will be offered under the rubric of PCS...." Notice at ¶ 98.

run afoul of its reasoned decisionmaking obligations.[69] As BellSouth correctly observes:

> The guiding principles in establishing a rational regulatory regime change whether the goal is to foster the development of a new personal communications service or to merely clone cellular. If the Commission's real agenda here is to create a cellular-clone, it must say so and begin a new proceeding, compile a relevant record, and develop rules guided by the principle of a "level playing field."[70]

In addition, many commenters, recognizing PCS' distinctiveness, quite properly reject cellular clustering as a reliable harbinger of PCS development.[71] To the extent one continues to believe that PCS will inevitably follow the path of cellular consolidation, CTIA suggests that it is "preferable to risk higher transaction costs of market consolidation, if it

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69 See Mountain States Telephone & Telegraph Co. v. FCC, 939 F.2d 1021, 1035 (D.C. Cir. 1991).

70 BellSouth at 63.

71 See, e.g., DOJ at 20-21; Fleet Call at 5 ("The Commission's tentative conclusion that larger PCS service areas are more desirable draws an overbroad and unwarranted conclusion from the cellular experience without sufficiently considering that PCS is being created as a fundamentally different service."); GTE Corporation at 34 ("Given the differences between microcellular and macrocellular service, it is not evident that the same economies 'driving cellular toward larger service areas' exist for PCS."); NTIA at n. 24 ("The Commission should be careful in interpreting this [geographic consolidation] as a guide to PCS.... [I]f cellular radio and some types of PCS develop as distinct services, there may be little correlation between the optimal size of a cellular license and the optimal size of a PCS license."); Sprint at 5; Tel/Logic Inc. at 7.

should occur, than to foreclose opportunities for broader participation from the outset."[72]

Finally, MTAs should be rejected as PCS service areas because their size is not commensurate with the inherent nature of PCS services. PCS appears at the moment to be primarily a microcellular-based, locally provided service that would be best accommodated by the multiple local service areas comprising the MSA/RSA scheme. Without compelling evidence that PCS service will be intrinsically national or regional in nature, it would be unwise to sacrifice the competitive benefits of a local scheme. MTAs, which are too large to invite or accommodate entry by local firms, are ill-suited for PCS and, accordingly, should not be used for PCS licensing.

4. National Licensing and National Consortia

CTIA fully addressed the inappropriateness of national PCS licensing in its initial comments.[73] We emphasize here that the overwhelming majority of commenters reject the use of

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72 Hughes at 7. See also U.S. Small Business Administration at 18. One must also realize that transaction costs exist whether the market is aggregating or subdividing and that higher costs are more likely to occur if larger service areas are selected, because these larger areas will be forced to "subcontract" to smaller areas to accommodate the intrinsically localized PCS markets. See Sprint at 4-5; Kahn Affidavit at n. 7.

73 CTIA at 48-49, 51-57.

national PCS licensing because it contravenes the Notice's stated goals and the public interest.[74]

A few commenters, no doubt in anticipation of these well-founded criticisms, have proposed modified versions of national PCS licensing. As CTIA demonstrates below, these hybrid schemes suffer from many of the same shortcomings which characterize traditional national licensing. They also introduce several new concerns. MCI, for example, suggests that the Commission grant PCS licenses to three national consortia.[75] According to MCI, these national consortia would consist of a major national conglomerate and a group of independent local operators that would be hand-picked by the national entity and that would have substantial ownership and participation in the consortium and its management.[76]

The benefits promised by such hybrid national licensing proposals are illusory. For example, MCI claims that national consortia will allow the Commission to realize its dual goals of capturing economies of scale through large service areas and broadening participation in PCS.[77] Upon

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74 See, e.g., APC at 25; BellSouth at 37; DOJ at 17-19; Telocator at 7-10; USTA at 21; Vanguard Cellular at 13; Viacom at 17.

75 MCI at 4-13. Other commenters endorsed the licensing of PCS to national consortia, but MCI's proposal presents the most detailed treatment of the concept.

76 MCI at 9 and n.6.

77 Id. at 8.